

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:

DAVID BO HYEON LIM

Debtor

Case No. 09-27116-DK

(Chapter 7)

* * * * *

**TRUSTEE'S OPPOSITION TO CREDITOR
THE DONG-A ILBO'S MOTION TO DISMISS**

George W. Liebmann, Trustee, by his undersigned attorney, Orbie R. Shively, files this Opposition to the motion to dismiss (Pl. 40) filed by creditor The Dong-A Ilbo, and in support thereof says:

1. This is an asset case in which a bar date for the filing of claims has been established as February 11, 2010. The Trustee has recovered some assets, is holding a small amount of funds, and anticipates the collection and recovery of more assets either through turnover by demand, turnover compelled by Court order, or adversary proceeding(s). As of December 10, 2009, four creditors have filed unsecured nonpriority claims totaling \$80,526.03.

2. The Dong-A Ilbo's motion and supporting memorandum and exhibits thereto raise some issues as to claims the bankruptcy estate may have or assert against various parties, the existence and pursuit of which by the Trustee will benefit the creditor body as a whole. If the case were dismissed, otherwise nonexempt property and claims against third parties assertable under nonbankruptcy law would revert to the Debtor. 11 U.S.C. § 349(b)(3).

3. The Dong-A Ilbo at p. 10 of its motion and memorandum (Pl. 40) incorrectly asserts that Debtor claims his stock in STV, Inc. as exempt. In fact, on both the Debtor's original

Schedule C (Pl. 1) and on his Amended Schedule C (Pl. 25), the 1,048 shares in STV, Inc. are listed at a value of “unknown” and a claim of exemption of zero. The Trustee is pursuing turnover of this and other assets, first by demand, and if necessary by a motion to compel.

4. The Trustee also intends to pursue and perhaps engage special counsel to pursue the claim against STV listed on the schedules as “Civil Suit against STV Network, Inc. for breach of employment contract” at a value of \$50,000 as to which the Trustee on November 9, 2009 filed an Objection to Exemption (Pl. 31).

5. Dismissal might be in the best interests of The Dong-A Ilbo because it wants to pursue its litigation against the Debtor; but dismissal does not appear to be in the best interests of creditors in general. The bankruptcy estate has an interest in the stock of STV, Inc. and has other claims against either STV, Inc. and/or STV Network, Inc. The Dong-A Ilbo has added STV, Inc. as a Defendant in the case originally brought against the Debtor and others in the Eastern District of Pennsylvania. The Dong-A Ilbo’s interest with respect to STV, Inc. is therefore adverse to the interests of the bankruptcy estate and other unsecured creditors.

6. Under 11 U.S.C. § 349(a), dismissal is without prejudice unless the Court orders otherwise and dismissal with prejudice is an extreme remedy. See e.g. In re Herrera, 194 B.R. 178, 189 (Bkcty. N.D. Ill. 1996) (“Though sparse, the legislative history clearly shows this provision was added to provide courts with greater authority to control abusive, multiple filings.”); In re Faulkner, 187 B.R. 1019, 1023 (Bkcty. S.D. Ga 1995) (“Dismissal with prejudice is a severe sanction to which the courts should resort only infrequently.”); In re Norton, 319 B.R. 671 (Bkrtcy. D. Utah 2005) (Noting that dismissal of case with prejudice is an extreme remedy).

WHEREFORE, George W. Liebmann, Trustee, prays that the motion be denied.

/s/ Orbie R. Shively

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2009, a copy of the foregoing Trustee's Opposition To Creditor The Dong-A Ilbo's Motion To Dismiss was sent either via the Court's electronic notification system or was mailed first class, postage prepaid to:

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/s/ Orbie R. Shively

Orbie R. Shively